ELECTION COMMISSION OF INDIA.

Talkatora Road,
NEW DELHI, 1.
Dated the 22nd December, 1967.

NOTIFICATION.

No. 82/MY/20/67.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order. pronounced on the 19th October, 1967, by the High Court of Mysore at Bangalore in Election Petition No. 20 of 1967.

By Order,
K. S. RAJAGOPALAN,
Secretary to the Election
Commission, India.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Dated the 19th day of October, 1967.

Before

THE HON'BLE MR. JUSTICE K. R. GOPIVALLABHA IYENGAR

Election Petition No. 20 of 1967.

D. T. Mayanna, Son of Thimmegowda, Residing at Doddamavathur, Kunigal Taluk. *Petitioner.*

Versus

1. Y. K. Ramaiah, Son of Kambe Gowda, residing at Yelekadakalu, Huliyur Durga Hobli, Kunigal Taluk.
2. N. Hutchamasti Gowda, Son of Nanje Gowda, residing at Yedavane, Kunigal Taluk.

.... *Respondents.*

Election petition filed by the Petitioner under Sections 100 and 101 of the Representation of the People Act, 1951 challenging the Election of the Respondent No. 2, to the Mysore Legislative Assembly from Huliyur Durga (General) Constituency No. 56 in the General Elections held in February 1967 and further praying, (a) to order inspection and recount of the votes polled by the Respondents and the rejected votes, (b) to declare after such inspection and recount that the election of the Second-Respondent is void and the petitioner is duly elected from the aforesaid constituency, Huliyur Durga No. 156 to the Mysore Legislative Assembly (c) to direct the Respondents to pay the costs of this petition and (d) to pass such further or other orders as one deemed fit in the circumstances of the case and in the interests of justice.

This Election Petition coming on for trial on Monday, 16th, Tuesday 17th and Thursday 19th days of October in the Presence of Sri K. Ramasubbaiah, Advocate for the Petitioner and Sri Yoganarasimhaiah, Advocate for Respondent No. 1 and Sri G. R. Ethirajulu Naidu and Sri R. S. Mahendra, Respondent No. 2 and this Election Petition having stood over for consideration, the Court made the following order this 19th day of October 1967.

ORDER.

Gopivallabha Iyengar, J:—

When this petition came for evidence on 16th October 1967 the second respondent's counsel submitted that arguments may be heard on Issue No. IV and finding

thereon may be given. As the said issue is in the nature of a preliminary issue and only the allegations made in the petition require to be considered, I heard arguments of the parties on the said issue and proceed to record my finding thereon. The IV issue reads:

> "Does the petitioner establish that the facts alleged by him are enough to justify an order for inspection and recount of the disputed ballot papers?
>
> *OR*
>
> Are they vague and do not contain adequate statement of material/facts and therefore should not be taken into consideration?"

The contention of the second respondent (hereinafter referred to as the respondent) is that the Election Petition does not contain a concise statement of the material facts on which the Petitioner relies, as required under Section 83(1) (a) of the Representation of the People Act, 1951 (hereinafter referred to as the Act).

It may be stated that this Election Petition relates to the General Elections held in February 1967 to the Mysore Legislative Assembly from the Huliyur Durga (General) Constituency, No. 56, the petitioners and the respondents being the contestants. The polling was held on 15th February 1967 and counting took place on 20th February 1967. A recount appears to have been held at the instance of the petitioner on 23rd February 1967 and the results were declared on the same day. The petitioner secured 15,050 votes, the first respondent secured 3,379 votes and the second respondent secured 15,126 votes. The number of rejected votes is 2,216. The second respondent was declared elected as he secured the largest number of votes. The petitioner has filed this petition under sections 100 and 101 of the Act for a declaration that the election of the second respondent is void and that the petitioner is duly elected from the aforesaid constituency.

The statement of facts disclosing the grounds on which inspection, scrutiny and recount of the ballot papers are sought are :—

That the counting which commenced on 22nd February 1967 was scheduled to begin at 9 A.M. but actually began at 10-30 A.M. and lasted till about 9 P.M. the petitioner had 7 counting agents and he himself was also present at the counting; the scheme of counting was, ballot boxes of 6 polling stations at a time were opened, scrutinised and counted at 6 different tables, 3 officers taking part in counting at each table; that the counting officers made 4 bundles of papers, one relating to what was called the Doubtful Group, the other 3 pertaining to the three candidates; that the returning officer to whom the bundles were handed after counting by the counting officer made a superficial check of all the papers, and accepted the division effected by the counting officers; that the doubtful papers were all treated as rejected votes; that in the course of the counting the petitioner and his counting agents observed that the counting officers treated as doubtful the ballot papers of the following descriptions :—

(a) Papers in which the marking made by the voters was duplicated on the paper in the process of folding the ballot paper;

(b) Papers bearing the soil marks on account of untidy handling of the ballot papers by the voters, although the voters had expressed their intention by making the requisite mark on the paper;

(c) Papers in which the marking was partly indistinct on account of the seal having insufficient ink; and

(d) Papers in which the seal had too much ink and therefore produced a wide dot instead of the cross on the ballot paper.

That these papers were later treated as rejected by the Returning Officer; that the petitioner aud his agents pointed out to the counting officers that this was unjust

and opposed to the Rules, as the ballot papers clearly manifested the intention of the voters and did not suffer from any of the infirmities which would render them liable to be rejected ; That the counting officers did not heed the objections of the petitioner and his counting agents nor did the returning officer set matters right and that he simply okeyed the decision of the counting officers without going into any details ; that the above mentioned irregularities were observed althrough the day until the end of the counting ; that the petitioner lost many votes on account of the abovesaid irregularities ; that the petitioner obtained a majority of votes in 35 polling stations out of 57 polling stations ; that he had a lead of, at one stage, thousands of votes and maintained a lead though attenuated gradually till the very last but one polling station ; that the counting of the last polling station tilted the balance giving the second respondent a majority of 84 votes over the petitioner ; that the rejection of the ballot papers on the grounds mentioned above is wholly erroneous and contrary to the Rules; that the rejections violated the second proviso to Rule 56(2) which provides that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked ; that in all the papers mentioned above the intention of the voter clearly appeared on the ballot paper but still the counting officers and the Returning Officer rejected them to the detriment of the petitioner, but for which the petitioner would have won the seat himself ; that as already stated at the end of the counting but before the Result Sheet was finalised and signed, the petitioner applied in writing to the Returning Officer, pointing out that there were grave irregularities and there was no proper scrutiny of the ballot papers rejected by the Returning Officer ; that a representation was made that a recount was necessary to determine the result of the election properly ; that the Returning Officer was not ready to take any initiative himself and had consultations with his superior officers by telephone and finally acceded to a

partial recount from Polling Stations 43 to 57 on the ground that when the counting was made of papers of those stations, there was failure of electric lights and that there may be mistakes on that account; that the petitioner did not urge that the errors were due to failure of lights although some mistakes might have crept in on that account and that his main objection was with regard to the improper scrutiny and illegal rejection of the ballot papers which had been marked in his favour. It is also alleged that a recount was held by the Returning Officer on 23rd Februray 1967 with the result that the Petitioner lost 15 more votes, and the second respondent 23 votes. It is therefore submitted that there was admittedly an error in the first counting and the recount was justified. The main grievance of the petitioner is that the votes cast in his favour were improperly rejected. It is also stated in paragraph 12 of the petition that two of the votes belonging to him were mixed up with the votes of the first respondent. In paragraph 13 of the petition, the petitioner submits that in order to determine the result of the election recount is necessary and therefore he prays that the court should direct an inspection of the votes of the first and second respondents and the rejected votes and restore those votes of the petitioner which are mixed up with those of the first and the second respondents and further to restore to the petitioner the votes of which he has been wrongly deprived by improper rejection of his votes. In paragraph 15 of the petition, the petitioner expresses an apprehension that some of his votes might have got mixed up with the votes of the respondents, as the counting was rushed through and gave room for mistakes. He further submits in paragraph 16 of the petition that he obtained a majority of votes in 35 polling stations and is defeated by a narrow margin of 76 votes and that on a recount the majority was reduced from 84 to 76. These circumstances, the petitioner submits, make it reasonable and necessary to hold a recount in order to serve the ends of justice. He further avers that if a recount is made he would not only get rid of the majority of 76 votes which the second respondent has over him but he himself would get a majority of more than 500 votes and would be

entitled to. be declared duly elected in place of the second respondent. On the basis of the above averments in the petition, the petitioner is asking for a recount of the votes cast in favour of the first and second respondents and also the rejected votes. The total number of ballot papers that are required to be inspected by the petitioner is therefore 20,271.

The respondent's counsel points out that the averments made in the petition and set out above are all of a general vague character without being a concise statement of material facts, as required by section 83 (1) (a) of the Act. It is also particularly emphasised that in order to justify an order for inspection scrutiny and recount of rejected ballot papers, it is incumbent on the petitioner to mention the number of the ballot papers which have been wrongly rejected or wrongly counted in favour of any particular candidate in the statement referred to in Section 83 (1) of the Act. He contends that in the circumstances the petitioner is not entitled to seek an inspection, scrutiny or recount of the ballot papers.

In support of the above contention, the learned counsel relies on the decisions reported in A. I. R. 1964 S. C. page 1249 (RAM SEWAK *vs.* H. K. KIDWAI) and in A. I. R. 1966 S. C. page 773 (JAGJIT SINGH *vs.* KARTAR SINGH) and the decision of this Court in E P. No. 5 of 1967 (Ganji Veerappa *vs.* H. Siddaveerappa). In A. I. R. 1964 S. C. page 1249 the Supreme Court sets out two conditions to justify the court to make an order for inspection of the ballot papers. The two conditions are:—

(i) That the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

The Supreme Court further observes:

> "But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts."

The Supreme Court also refers to the fact that the Rules framed under the R. P. Act, 1951, set up an elaborate machinery relating to the stage of counting of votes by the Returning Officer, and provide ample opportunity to the candidate who has contested the election or his agents to remain present and to keep an eye on any improper section which may be taken by the returning officer. After discussing the relevant provisions from Rule 53 to Rule 63 of the Conduct of Election Rules, relating to the procedure to be adopted for counting of votes, the Supreme Court observes that:

> "There can therefore be no doubt that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning officer inspecting any rejected votes, and to demand a recount. Therefore, a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinised and opened and the votes were counted. He also had opportunity of inspecting rejected ballot papers, and of demanding a recount. It is in the light of the provisions of Section 83 (1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and of

claiming a recount that the application for inspeetion must be considered."

The Supreme Court also prescribes that to support the petitioner's claim for setting aside the election, the petitioner has to make precise allegations of material facts which having regard to the elaborate rules are or must be deemed to be within his knowledge. Keeping the above principles in mind, there is no doubt that it is possible for a candidate like the petitioner to definitely set out which particular ballot paper is wrongly rejected or cast in favour of any particular candidate and why it is wrong. The statement made by the petitioner in this case do not bear any specific reference to any particular ballot paper. It must also be noted that while dealing with the following observations of the Supreme Court in 22 E. L. R page 288 (Bhim Sen's case) that:

> " definite particulars about the number and nature of the void votes that had been counted could only be supplied after inspection of the ballot papers";

they state that those observations were not intended to be a general statement of the law that whenever an allegation is made in a petition to set aside an election that void votes have been included in the counting of votes received by a successful candidate, definite particulars with regard to the said void votes may only be supplied after the ballot papers are inspected and that a defeated candidate may claim inspection of the ballot papers without making any specific allegations of material facts and without disclosing a *prima facie* case in support of the claim made. This indicates that before a petitioner can ask for scrutiny and inspection of the ballot papers, he must mention definite particulars with regard to the votes in respect of which he complains. Therefore, the inspection of ballot papers can only follow if definite particulars are mentioned in regard to the ballot papers called in question in the petition. The inspection of the ballot papers cannot precede the definite particulars being given.

Sri K. Ramasubbiah, the learned counsel for the petitioner invited my attention to paragraph 10 of the above decision, wherein the averments made by the election petitioner in that case are set out. He points out that the said allegations are vague and merely denote a belief on the part of the petitioner therein, while the averments in the present case are not of the same nature. It is difficult to accept this contention. Keeping in view the observations of the Supreme Court in the decision referred to above, and examining the several allegations made in the petition it cannot be said that the comment made by the respondent's counsel that the averments made by the petitioner are general and vague is without justification.

In A. I. R. 1966 S. C. page 773, the Supreme Court examined the scope and the significance of Section 83 (1) (a) of the Act and state that :

> "Vague or general allegations that valid votes were improperly rejected or invalid votes were improperly accepted would not serve the purpose which Section 83(1) (*a*) has in mind. An application made for inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice the ballot boxes should be inspected or not. In dealing with this question the importance of the secrecy of the ballot papers cannot be ignored and it is always to be borne in mind that statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting."

They also observe that :

> "Care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void."

No doubt they have refrained to lay down any hard and fast rule in the matter.

It is not necessary at present to analyse the Scheme of the Rules in Chapter V of the Conduct of Election Rules, as the Supreme Court has, only after such analysis, come to the conclusions set out above. From the observations of the Supreme Court it is clear that the election petitioner has the knowledge relating to the particulars of the ballot papers and rejection of the same. The fact that the candidate had ample opportunity to examine the voting papers before they were counted implies that in respect of each voting paper the petitioner is in a position to set out with precision his objections for its acceptance or its rejection. He is also in a position to note down the ballot paper numbers. It is only if the ballot paper numbers are given that the particular ballot papers in regard to which the petitioner complains can be picked up and scrutinised. In the absence of such information, which the petitioner should know or should be deemed to know, any inspection of ballot papers would be merely a roving and fishing inspection and the purpose of Section 83(1)(*a*) is to prevent such consequence. The elaborate provisions affording reasonable opportunities to the candidates and their agents to inspect the ballot papers are to enable them to raise objections and to note down the numbers of the ballot papers in respect of which the objections are raised. It would not be ureasonable to expect the candidate or the counting agent present at the time of counting to bear in mind that there may arise a contingency to file an election petition when the particulars in regard to the number of ballot papers concerned will have to be mentioned. Shri K. Ramasubbayya, the learned counsel for the petitioner contended that it would be against the provisions of Rule 54 of the Conduct of Election Rules, 1961, to note down the number of the ballot paper, as by doing so, the secrecy of voting would be violated. It is pointed out that in Rule 54 it is provided that the Returning Officer shall before he commences the counting read out the provisions of Section 128, to such persons as may be present. Section 128 provides for the maintenance of secrecy of

voting. It does not make any reference to noting the number of the ballot paper but only emphasises the importance of maitenance of secrecy of voting by prescribing a penalty for breach of the same. It is not possible to understand how secrecy of voting is violated by a candidate or his agent by noting down the number of the ballot paper in regard to which he objects at the time of counting. It is only if the serial number of the electoral roll can be connected with the number of the ballot paper, the secrecy would be breached and not otherwise At the time of counting, it is not possible to correlate the serial number of the electoral roll with the number of the ballot paper. Therefore, by noting down the number of the ballot paper, the secrecy of ballot is not violated. On the other hand, it is necessary to note down the number of the ballot paper so as to make precise allegations as to how the said ballot paper ought or ought not to have been rejected. Refernce to Rule 56, Clause (3) in this connection would be relevant. It provides that before rejecting any ballot paper under Sub-rule (2), the Returning Officer shall allow each counting agent present, a reasonable opprtunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper. Rule 4 provides that the Returning Officer shsll endorse on every ballot paper which he rejects letter 'R' and the grounds of rejection in an abbreviated form either in his own hand or by means of rubber stamp and shall initial such eudorsement. Rule 3 implies that counting agent has resonable opportunity to inspect the ballot paper meaning thereby that he can look at both sides of the ballot paper and inspect it. This would afford a chance to the counting agent to note down the number of the ballot paper as also other particulars relating to it. Hence, I cannot accept the contention of Sri Ramasubbayya that the counting agent is not permitted to note the serial number of the ballot paper. The prohibition against the noting of the number of the ballot paper is provided in Rule 38 of the Conduct of Election Rules, 1961. Rule 38, sub-rules (2) and (3) are as follows:—

> "38 (2).—At the time of issuing a ballot paper to an elector, the polling Officer shall record the

serial number thereof against the entry relating to the elector in the marked copy of the electoral roll."

"38 (3). —Save as provided in sub-rule (2), no person in the polling station shall note down the serial numbers of the ballot papers issued to particular electors".

As is clear from the above provisions, noting of the serial number of the ballot paper is prohibited at the time of issuing the ballot paper. This is understandable, because if a person notes down the Number of the ballot paper, corresponding to the serial number in the electoral roll and at the time of the counting, the number of the ballot paper becomes known to the counting agent, it would be possible to correlate the serial number on the electoral roll with the exercise of franchise thus leading to breach of secrecy of ballot. The position at the time of counting is quite different as the marked electoral roll with the number of the ballot paper is not available to the counting agent. The marked copy of the electoral roll will be in a separate sealed packet as prescribed under Rule 46 and it is not opened at the time of counting. This is another reason why it is not possible to understand how there can be a violation of the secrecy of the ballot if the number of the ballot paper is noted down at the time of rejection of the ballot paper while counting.

The respondent's counsel invites my attention to the decision of this Court in Election Petition No. 5/67 (Ganji Veerappa *vs.* H. Siddaveerappa) in which it is observed as follows :—

"When the petitioner's election agent had ample opportunity to note the particulars of the ballot papers said to have been improperly rejected, the petitioner should have given the serial numbers and the polling station numbers of the said ballot papers and the nature of the objection in relation to the said ballot papers."

In making these observations, his Lordship Govindabhat, J. has relied upon the two decisions of the Supreme Court which I have referred to earlier. The above decisions of the Supreme Court proceed on the footing that the petitioner who is a defeated candidate has at the time of counting ample opportunity to examine the voting paper which has been improperly rejected and hence he knows the reasons for the rejection and also the particulars of the paper rejected. In these circumstances, I agree with the observations of this court cited above. On a careful consideration of the several allegations made by the petitioner in his Election Petition seeking an inspection of the ballot papers, I am of the opinion that they are vague and general and if an inspection is ordered, it will lead to a fishing enquiry with a view to find out some material to support the petitioner's case that he would have secured a larger number of votes than what he has secured at present The allegation in regard to improper acceptance of votes in favour of the respondents are also vague and indefinite. They do not contain any material facts,—let alone the number of the ballot paper—to justify a recount of the ballot papers. The mere fact that after recount the margin of 84 votes was reduced to 76 does not justify any conclusion that there has been an improper reception of ballot papers in favour of the respondents. This cannot again be taken as a precise or a concise statement as required by law to justify a recount.

Shri Ethirajulu Naidu, the learned counsel for the respondents further pointed out that the petitioner has failed to give the exact number of votes which ought to have been counted in his favour. The petitioner merely states in paragraph 16 that if a fresh counting is made, he would get more than 500 votes than what the respondent has secured and would be entitled to be declared elected. It is submitted that the petitioner instead of mentioning 500 could have mentioned any other figure. It would mean that there is no definiteness in this allegation made by the petitioner. There is much force in this contention also. I hold that the allegations in the petition are vague

and do not satisfy the requirements of Section 83 (1) (*a*) of the Act. Therefore, my findings on both parts of the fourth issue are against the petitioner.

The first 3 issues are as follows :—

Issue No. I—Does the petitioner prove that the Counting Officers treated as doubtful the ballot papers of the following descriptions ?

(*a*) Papers in which the marking made by the voters was duplicated on the paper in the process of folding the ballot paper ;

(*b*) Papers bearing the soil marks on account of untidy handling of the ballot papers by the voters, although the voters had expressed their intention by making the requisite mark on the paper ;

(*c*) Papers in which the marking was partly indistinct on account of the seal having insufficient ink ;

(*d*) Papers in which the seal had too much ink and therefore produced a wide dot instead of the cross on the ballot paper ; and later the Returning Officer rejected the same ?

Issuse No. II.—Was the rejection of the above said ballot papers wholly erroneous and contrary to Rules and the scrutiny and counting of the above ballot papers are violative of the provisions of Rule 56 (2) of the Conduct of Election Rules?

Issue No. III.—Does the Petitioner prove that there has been improper scrutiny and illegal rejection of the ballot papers marked in favour of the petitioner ?

It is not disputed that these issues relate to the inspection and scrutiny and recounting of the ballot papers. In view of my finding on Issue No. IV, Issues Nos. I, II and III do not arise for consideration.

It is only on the remaining Issues that the petitioner can lead evidence. He may do so.

(Sd.) K. R. GOPIVALLABHA IYENGAR,
Judge.

19-10-1967.

ORDER.

19-10-1967

Gopivallabha Iyengar. J.

It is unnecessary for me to set out in detail the averments made in the Election Petition relating to Issues Nos. I to IV as I have already set them out in my order giving a finding on the IV issue in the case. The said order may be read as a part of this order.

The remaining Issues on which the petitioner was to lead evidence are as follows:—

Issue No. V.—(*a*) Does the Petitioner prove that the second Respondent has been the recipient of the votes exercised in the names of persons who are dead, or non-residents, or absent being on election duty itself, as detailed in the annexure to the petition giving the particulars of voters who are dead, or non-residents, or absent being on election duty itself and whose votes have been exercised in favour of the second respondent?

(*b*) Does the Petitioner prove that in the above circumstances the result of the election in so far as it concerns the second respondent has been materially affected under Section 100 (1) (*d*) (iii) of the R. P. Act?

Issue No. VI.—Does the petitioner prove that in the Polling Stations Nos. 44, 46, 47 and 48 the supporters of the second respondent rushed crowds of people to the Polling Stations at the closing

hours on the polling day and taking advantage of the situation managed to get all of them to vote for the second respondent in the names of persons whose votes had not been exercised so far and that by this there has been an improper acceptance of any votes which are void, and as a consequence of which the result of the election in so far as the second respondent is concerned has been materially affected under Section 100 (1) (d) (iii) of the R. P. Act?

Issue No. VII:—Does the petitioner prove that for the above reasons the election of the second respondent is liable to be declared void and that he would get a majority of votes in his favour and therefore entitled to be declared as duly elected?

Regarding Issues No. V (*a*) and (*b*), VI and VII, it is alleged in paragraph 17 of the petition that the second respondent has been the recipient of votes exercised in the names of persons who are dead or non-resident or absent being on election duty itself and that the supporters of the second respondents have procured these votes to the second respondent. The details of such votes are mentioned in the Annexure attached to the petition. It is also averred that in Polling Stations Nos. 46, 47 and 48 the supporters of the second respondent rushed crowds of people to the Polling Stations at the closing hours on the polling day and taking advantage of the situation managed to get all of them to vote for the second respondent in the names of persons whose votes had not been exercised so far and thus there was an improper acceptance of several votes which are void and as a consequence the result of the election in so far as the second respondent is concerned has been materially affected. Those allegations have been denied by the second respondent as being false and unfounded. He also submits that the details mentioned in the Annexure are not correct. The second respondent also denies the allegations made in paragraphs 18 and 19 of the Election Petition. On the basis of these pleadings, the Issues Nos. V (*a*) and (*b*), VI and VII are framed.

As the second respondent has also made an application under Section 97 of the Representation of the People Act, 1951 Issue No. VIII was framed as hereunder.

Issue No. VIII:—(*a*) Does the Second respondent prove that the petitioner and his agents at his instance have procured votes in the names of persons who were dead or who were not present at the place to exercise their franchise, as per particulars furnished in Annexure "B" attached to the recrimination filed by the second respondent, under Section 97 of the Representation of People Act, and the votes so polled should not be counted in favour of the petitioner?

(*b*) Does the second respondent prove that on account of the said improper reception of the invalid votes the result of the election in so far as the petitioner is concerned would be materially altered?

It is undisputed that the burden of proving issues Nos. V (*a*) and (*b*), VI and VII is on the petitioner and the petitioner has not chosen to adduce any evidence. In these circumstances my finding on the above Issues are against the petitioner.

In view of the above, it has become unnecessary to consider Issue No. VIII (*a*) and (*b*) pertaining to the recrimination filed by the second respondent.

In the result, this Election Petition fails and the same is dismissed with costs of the second respondent. Advocates fee Rs. 500.

(Sd.) K. R. GOPIVALLABHA IYENGAR,
Judge.

ELECTION COMMISSION OF INDIA

TALKATORA ROAD,
NEW DELHI-1.

Dated the 22nd December, 1967.

ORDER

No.MY-LA/7/67. Whereas the Election Commission is satisfied that Shri Shankrappa Sharnappa, Shankrappa Shivpure, Ex-MLA, Chincholli Taluk, a contesting candidate for election to the Mysore Legislative Assembly from 7. Chincholi constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

AND WHEREAS, after considering the representation made by the said candidate, the Election Commission is further satisfied that he has no good reason or justification for the failure ;

NOW, THEREFORE, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Shankrappa Sharnappa to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

By order,

K. S. RAJAGOPALAN,
Secretary to the Election Commission.

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